

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

M.U.,

Petitioner,

v.

THE SUPERIOR COURT OF ORANGE
COUNTY,

Respondent;

ORANGE COUNTY SOCIAL SERVICES
AGENCY et al.,

Real Parties in Interest.

G042542

(Super. Ct. Nos. DP013774 &
DP017536)

O P I N I O N

Original proceedings; petition for a writ of mandate to challenge an order of the Superior Court of Orange County, Douglas J. Hatchimonji, Judge. Petition denied.

Deborah A. Kwast, Public Defender; Frank Ospino, Assistant Public Defender, Michael Perez and Paul DeQuattro, Deputy Public Defenders, for Petitioner.

Nicholas S. Chrisos, County Counsel, and Karen L. Christensen, Deputy County Counsel, for Real Party in Interest, Orange County Social Services Agency.

Law Offices of Patricia Smeets Rossmeisl and Donna P. Chirco for the Minors.

* * *

M.U., mother of Kayla R. and Lauren R., seeks extraordinary relief from the order of the juvenile court terminating reunification services and setting a permanent plan selection hearing pursuant to Welfare and Institutions Code section 366.26.¹ She contends there is insufficient evidence to support the finding that she failed to regularly participate or make substantive progress in her treatment plan. We find sufficient evidence and deny relief.

FACTS

Two-year-old Kayla and four-month-old Lauren were removed from their mother's custody by the Orange County Social Services Agency (SSA) in September 2008, along with their older sister, R.R. R.R. had been adjudicated a dependent of the juvenile court shortly after her birth in April 2005 because she was born with a positive toxicology screen for heroin. Her mother admitted to using heroin, had previously engaged in incidents of domestic violence, and had a criminal record. Her father also had a history of substance abuse and had a criminal record. The mother participated in reunification services and visited R.R. regularly.

In July 2006, the mother gave birth to Kayla. Subsequently, the mother left the father, and she and the baby moved in with a friend. In October 2006, R.R. was released to the mother on a trial visit. The visit failed, however, in January 2007 when the father was found in the mother's home in violation of a court order. Six months later,

¹ All statutory references are to the Welfare and Institutions Code.

in June 2007, R.R. returned to her mother's custody with family maintenance services. In May 2008, Lauren was born.

Four months later, all three children were removed from the mother because they were found living in the paternal grandmother's home, a known drug house, under filthy conditions with dangerous substances within easy reach of the children. R.R. was placed with her former foster parents; Kayla and Lauren were placed in another foster home.

A dependency petition alleging sibling abuse and general neglect was sustained on behalf of Kayla and Lauren in November 2008, and the parents were given reunification services. The mother was ordered, inter alia, to "show your ability to live free from drug dependency," "[o]btain and maintain a stable and suitable residence for yourself and your child[ren]," and "participate in Narcotics Anonymous/Alcoholics Anonymous [NA/AA]"

The parents attended their monitored visits regularly and were affectionate and appropriate with the children. Both parents had been enrolled in a methadone program through the Health Care Agency for more than three years and were currently on a high dosage. They told the social worker they planned to decrease the dosage, but the social worker observed, "[I]t does not appear that the parents are motivated to do this at this time." She worried that the parents would not be able to reunify with the children unless they decreased their dependence on methadone. The mother managed to reduce her methadone intake from 80 milligrams daily to 71 milligrams daily by early November 2008 and was "on a plan" to decrease it by 1 milligram every four days. Her dosage got as low as 54 milligrams daily, which she maintained for several months; in April 2009, however, her dosage was increased to 59 milligrams daily.

In May 2009, the social worker reported the mother was expecting another baby. Although the mother was participating in most of her services, she had not significantly reduced her methadone intake, she was not attending NA/AA meetings, and

she continued to live at the paternal grandmother's house with the father. In July 2009, the social worker reported there had been six police reports regarding the paternal grandmother's house in the past six months, including charges of verbal and physical assaults between and among the mother, the father, the paternal grandmother, and various other persons who moved in and out of the home. The social worker, accompanied by a police officer, made an unannounced home visit to the parents' home in July. When the officer approached the door, the father and several other persons could be seen trying to drive away. The officer stopped them all, and they complied with his request to enter the house. The social worker inspected the house and found two of the bedroom doors bolted shut; none of the home's occupants had keys. She observed "an uncountable amount" of empty beer bottles in the backyard. One paternal uncle sat outside during the interview; another had a house arrest device on his ankle, although he could not explain why. The father was evasive and inconsistent in response to the social worker's questions. Ultimately, he told her that the mother was living at a shelter.

The mother entered a 30-day emergency shelter for homeless pregnant women on July 7. The shelter's director told the social worker "a typical client is to be out job searching during the day, document their contacts, and participate in the on-premises classes." The shelter's staff was concerned about the mother because she would leave the shelter to go to the methadone clinic and be gone all day. The mother moved out of the shelter on August 7; she was not accepted into the shelter's long-term program because she did not obtain employment. The mother moved back into the paternal grandmother's home.

At the six-month hearing, held in August 2009, the juvenile court found, by clear and convincing evidence, that the parents had "failed to participate regularly and make substantive progress in a court-ordered treatment plan"; consequently, it terminated reunification services and set a permanent plan selection hearing (§ 366.26) for December 17, 2009.

DISCUSSION

The mother contends there is no substantial evidence to support the juvenile court's finding that she failed to regularly participate and make substantive progress in her treatment plan. She points out that she drug tested and visited her children twice a week, participated in counseling, completed an eight-week parenting program, and kept in contact with the social worker. She argues that neither her failure to attend AA/NA meetings nor her failure to obtain suitable housing is sufficient to support the finding. We disagree.

A six-month hearing is governed by section 366.21, subdivision (e). The portion at issue here is as follows: "If the child was under three years of age on the date of the initial removal . . . , and the court finds by clear and convincing evidence that the parent failed to participate regularly and make substantive progress in a court-ordered treatment plan, the court may schedule a hearing pursuant to Section 366.26 within 120 days."

The record contains evidence that the mother failed to make substantive progress on her treatment plan because she continued her dependency on methadone and was either unable or unwilling to maintain a suitable residence for the children. The mother had been on methadone since R.R. was born, in April 2005. In September 2008 she was still on 80 milligrams of methadone; by the time of the hearing, her intake was 59 milligrams. This is a reduction of only 21 milligrams in 11 months, less than 2 milligrams per month. The mother was well aware of the need for her to reduce the amount of methadone. As she concedes in her petition, "a patient receiving methadone maintenance is not substance free" and "is unable to ascribe to important principles of A.A." Thus, she was unable to participate in AA or NA as ordered by the court.

The mother also continued to live in the paternal grandmother's home, where drug trafficking and other criminal activities were rampant. This is the home from which the children were detained, due to the deplorable living conditions. The mother

was not able to have unmonitored visits because she did not have a safe place to take her children. Without progress on the housing issue, there was no reasonable likelihood that the mother would be able to reunify with her children. And she made only minimal efforts to complete that important part of her case plan.

There is ample evidence to support the finding that the mother had not made substantial progress in treatment since Kayla and Lauren were detained. This evidence is underscored by the fact that the mother had previously received services in connection with R.R.'s case for more than three years. The juvenile court's order terminating reunification services was correct.

DISPOSITION

The petition is denied.

SILLS, P. J.

WE CONCUR:

FYBEL, J.

IKOLA, J.